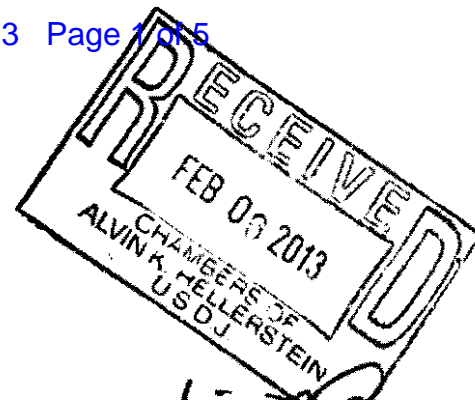


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February 5, 2013

Honorable Alvin K. Hellerstein
United States District Court for the Southern District of New York
500 Pearl Street
New York, New York 10007

Re: WTC Litigation, 21MC102 (AKH),
Alex Sanchez, 05 cv 1091 (AKH)
Defense Designation of a Psychiatric Examination

Dear Judge Hellerstein:

We are writing with reference to a Notice of Psychiatric Examination served by Richard Leff of McGivney and Kluger, P.C., on behalf of the Defense Liaison Committee for one of our clients, Alex Sanchez. We believe there is a conflict and the designated physician, Steven A. Fayer, MD should be disqualified from examining.

Plaintiffs' Position

In short, Dr. Fayer has multiple associations with Mt. Sinai and World Trade Center victims. Mr. Sanchez, along with thousands of other claimants received substantial care from the medical staff at Mt. Sinai. Significantly, Dr. Fayer is on the faculty, at the Mt. Sinai School of Medicine, Department of Psychiatry, along with Dr. Adriana Feder, Dr. Laurie Malkoff and Dr. Agnieszka Wisniewska, three of Mr. Sanchez' treating psychiatrists.

Without suggesting the intent of the defense, a logical presumption is that such designation was done to solicit conflicting opinion and testimony from their examining doctor with that of treating doctors at the same facility and the same department at Mt. Sinai. Certainly, there is the appearance of potential conflict and Dr. Fayer's significant involvement at Mt. Sinai, currently and in the past raises concern.

There may have been actual direct communication between Dr. Fayer and some of the plaintiffs examining, consulting or treating physicians at Mt. Sinai, and Dr. Fayer may not even necessarily be aware of the plaintiff's names about whom he was consulting.

Dr. Fayers' curriculum vitae, annexed, reflects in part:

1974-1977	Residency Psychiatry, Mt. Sinai Medical Center
1974-1977	House Staff Representative-Mount Sinai Hospital-Committee of Interns and Residents

*Objection denied.
No sufficient basis
to disqualify has been
shown. Common affiliation
with a hospital as
other medical institution is
not a basis to
disqualify.
2-19-13
Alvin K. Hellerstein*

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1977	Hose Staff Representative-Mount Sinai Hospital Medical Board
1988-present	Electro-Convulsive Treatment Panel, Mount Sinai Medical Center
2001	Disaster Psychiatry Outreach PC, Clinical Director, World Trade Center Victims and Family Center, Pier 94
1977-present	Affiliated with Mount Sinai Hospital
1977-present	Asst. Clinical Prof of Psychiatry-Mount Sinai School of Medicine
1977-present	Attending Physician, The Mount Sinai Hospital
1990-1993	Dept of Psychiatry, Mt. Sinai Hospital
1990-present	In-Patient Psychiatric Hospital, Mt. Sinai Attending Rounds
2000-2008	Supervision of Residents, Emergency Room Teaching Psychiatry Residents, Forensic Psychiatry course, Mt. Sinai Hospital

Additionally, we inquired of Mr. Leff on behalf of McGivney & Kluger on the issue of potential conflict. Our inquiry was:

Has Dr. Fayer in the past and or currently evaluated and treat any post 9-11 responders, workers, etc and if so are any of them and/or have any of them been a claimant in the litigation, 100/102/103, a claimant in the original WTC Fund and or the current WTC Fund;

And if he has so treated and/or evaluated has such been done while the individual was a in/outpatient at Mt. Sinai, and if so, has it been while the individual was a patient of the WTC Health Program and/or any of its predecessors, and/or as a referral of such WTC Programs

Mr. Leff's response was:

...Dr. Fayer has evaluated first responders and post responders for the New York State Disability and Retirement System. He has no idea if any of them are or were a claimant in the litigation or in the original or current WTC fund. The purpose of those evaluations was for Disability Determinations. He was an independent evaluator.

Dr. Fayer does not know if the individuals he evaluated were treated in the Mt Sinai program at the time the evaluations were performed. He has had no contact with the plaintiffs we have requested be evaluated.

Dr. Fayer has broad, lasting and current affiliations with Mt. Sinai Hospital. He has conducted evaluations of first responders and post responders. He doesn't know if any were litigation or Fund claimants or if any were in the Mt. Sinai WTC Health Program when he did his evaluations. The opportunity for conflict is too great to allow Dr. Fayer to act as a designated examining psychiatrist for the defense.

As to be in compliance with the Notice served, we have tentatively scheduled the date for examination although at the time defense was notified that we may be making an objection. We now formally request that Dr. Fayer be disqualified from acting in this capacity in the litigation and that the defendants, with broad opportunity to seek another psychiatrist without prejudice to their defense, should be so directed.

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Defense Position

Plaintiff's counsel is attempting to create the inference of a conflict where none exists. Dr. Fayer has never evaluated or treated plaintiff Sanchez. Dr. Fayer has not consulted with any of the other doctors who treated plaintiff for alleged psychological issues. Absent some evidence that Dr. Fayer worked with plaintiff (or any of the plaintiffs designated to undergo a psychiatric evaluation by Dr. Fayer) or consulted with one of the other doctors treating one of those plaintiffs, the mere fact that he works at Mt. Sinai creates no conflict.

Plaintiffs' counsel speculates the designation of Dr. Fayer was done to solicit conflicting opinion and testimony with that of other doctors from the same facility. The fact there may be a difference of opinion as among different doctors working at the same facility as to a patient's diagnosis and treatment occurs frequently and does not create a conflict nor the presumption of one.

There is no "appearance of impropriety" unless there is a basis to assert that Dr. Fayer is in possession of "inside information" concerning the evaluation or treatment that plaintiff received. There is no such basis. Plaintiffs do nothing more than make assumptions and speculate. They assume a "conflict" without demonstrating that any such conflict exists.

Finally, the fact that Dr. Fayer has treated 9/11 responders does not diminish his qualifications. To the contrary, defendants asserts that his experience treating 9/11 responders *enhances* his qualifications, as he is able to evaluate the designated plaintiffs in light of his knowledge of the psychological ramifications "suffered" by such responders. It would, therefore, be prejudicial to the defense to bar defendants from using the particularly qualified and experienced physicians from Mt. Sinai as experts without some showing of real (not imagined) conflict as to a specific plaintiff.

Plaintiffs' counsel's speculations are insufficient grounds to disqualify Dr. Fayer to act as a designated examining psychiatrist for the defense. The defense requests plaintiffs' application be denied and the designated plaintiffs be directed to proceed with the examination.

Respectfully submitted,

Gregory J. Cannata & Associates and
Robert A. Grochow, P.C.

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By: _____
Robert A. Grochow

Gregory J. Cannata

By: _____
Gregory J. Cannata

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Defense Liaison Committee on behalf of
Defendants in the 21 MC 102 Docket

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By: _____
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